

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of

Amendment of Section 73.202(b))
Table of Allotments) MB Docket No. 05-245
FM Broadcast Stations) RM - 11264
(Sierra Vista and Tanque Verde, Arizona))
)

To: Office of the Secretary
Attn: Assistant Chief, Audio Division
Media Bureau

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Federal Communications Commission
Office of Secretary

COUNTERPROPOSAL

COCHISE BROADCASTING, LLC

DESERT WEST AIR RANCHERS
CORPORATION

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September 19, 2005

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SUMMARY

In this Counterproposal, Cochise Broadcasting, LLC and Desert West Air Ranchers Corporation propose to (i) delete Channel 267C3 at Corona de Tucson, Arizona and allot Channel 267C3 to Tanque Verde, Arizona as that community's first local service; (ii) delete Channel 253A at Vail, Arizona and allot Channel 253A to Corona de Tucson, Arizona; and (iii) delete Channel 279C3 at Lordsburg, New Mexico and allot Channel 279A to Vail, Arizona. Cochise and Desert West also propose to allot Channel 279C1 to Animas, New Mexico, and Channel 228C1 to Virden, New Mexico as those communities' first local services. Cochise and Desert West demonstrate that these amendments to the FM Table of Allotments can be made in compliance with the FCC's rules and policies.

The petitioner in this proceeding, CCR-Sierra Vista, LLC, had proposed to reallocate Channel 265A from Sierra Vista to Tanque Verde, Arizona. Cochise and Desert West demonstrate that the petition is defective because there is no suitable transmitter site at which the allotment can be made. Moreover, the petition's loss area study included several impermissible stations, which masked a large "gray area" that would actually be created by. Finally, Cochise and Desert West demonstrate that a Tuck showing is necessary because Tanque Verde is located partially within the Tucson Urbanized Area.

Even if the two proposals for Tanque Verde are compared according to the Commission's priority rules, the Counterproposal of Cochise and Desert West is preferred. It provides a first aural reception service to a sizeable area and population, provides a second aural reception service to a sizeable area and population, and provides a first local service to three communities. For these reasons, the Commission should issue a Public Notice and grant the Counterproposal.

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COUNTERPROPOSAL

Cochise Broadcasting, LLC ("Cochise"), licensee of Station KKYZ(FM), Corona de Tucson, Arizona,¹ and permittee of a new station at Lordsburg, New Mexico,² and Desert West Air Ranchers Corporation ("Desert West"), licensee of Station KRDX(FM), Vail, Arizona³ (together the "Joint Parties"), by their counsel, hereby submit this Counterproposal, which proposes to (i) delete Channel 267C3 at Corona de Tucson, Arizona and allot Channel 267C3 to Tanque Verde, Arizona as that community's first local service; (ii) delete Channel 253A at Vail, Arizona and allot Channel 253A to Corona de Tucson, Arizona; and (iii) delete Channel 279C3⁴ at Lordsburg, New Mexico and allot Channel 279A to Vail, Arizona. The Joint Parties also propose to allot Channel 279C1 to Animas, New Mexico, and Channel 228C1 to Virden, New Mexico as those communities' first local services. If this Petition is granted, the Joint Parties

¹ See *Report and Order* in MB Docket No. 03-141, 19 FCC Rcd 10997 (2004).

² BNPH-20050609ABD.

³ See *Report and Order* in MM Docket No. 00-31, 16 FCC Rcd 20515 (2001).

⁴ Cochise's permit for Lordsburg specifies Channel 279C1. BNPH-20050609ABD. The Table of Allotments was changed to Channel 279C1 by the permit. But that change does not become effective until the Commission issues a separate Order and that Order is published in the Federal Register. This is a ministerial act and is expected to take place in due course. As a result, the Lordsburg channel will be referred to as Class C1 herein.

will file the necessary applications and construct the facilities as authorized. The following amendments to the FM Table of Allotments are requested (listed alphabetically):

Community	Channel	
	Existing	Proposed
Corona de Tucson, Arizona	267C3	253A
Tanque Verde, Arizona	--	267C3
Vail, Arizona	253A	279A
Animas, New Mexico	--	279C1
Lordsburg, New Mexico	279C3, ⁵ 250C	250C
Virden, New Mexico	--	228C1

In support hereof, the Joint Parties state as follows:

I. CCR-SIERRA'S PETITION FOR RULE MAKING IS DEFECTIVE.

1. As the attached Engineering Statement demonstrates, the proposal submitted by CCR-Sierra Vista, LLC ("CCR-Sierra") is technically unacceptable because it fails to provide a viable allotment site. Specifically, CCR-Sierra proposes a tower site that is located within the boundaries of the Pusch Ridge Wilderness Area. In *Grand View, Idaho*, 15 FCC Rcd 2768 (2000), the Commission staff denied a proposal where a letter was submitted by a federal official stating the land was unavailable for a transmitter site. Similarly, in *Ketchum, Idaho, et. al.*, 19 FCC Rcd 292 (2004), the Bureau denied a proposal stating that the proposed site was located in a National Forest with no roads or electric power. Here, Section 4(c) of the Wilderness Act of 1964 (*See Exhibit 1*) provides:

4(c) Except as specifically provided for in this Act, and subject to existing private rights, there shall be no commercial enterprise and no permanent road within any wilderness area designated by this Act and, except as necessary to meet minimum requirements for the administration of the area for the purpose of this Act (including measures required in emergencies involving the health and safety of persons within the area), there shall be no temporary road, no use of motor vehicles, motorized equipment or motorboats, no

⁵ As discussed previously, the table has been amended to 279C1 based on the grant of the permit, File No. BNPH-20050609ABD, but the amendment is not yet final.

landing of aircraft, no other form of mechanical transport, and no structure or installation within any such area.

In addition, the Pusch Ridge Wilderness Area web site specifically states that:

Motorized and mechanized vehicles and equipment, including mountain bikes, are not permitted in Wilderness. (See Exhibit 1).

We have been unable to identify any towers within the Wilderness Area. The site area for CCR-Sierra's proposal is located and wholly contained within the Wilderness Area. The Engineering Statement indicates that there is no non-short spaced site area outside the Pusch Ridge Wilderness Area and Coronado National Forest. The Commission will not allot a channel if there is no satisfactory transmitter site available. *Sebring and Miami, Florida*, 10 FCC Rcd 6577, 6578 (1995). Thus, CCR-Sierra's proposal must be dismissed.

2. As will be discussed below, CCR-Sierra's proposal contains another defect. It includes several impermissible stations in its loss-area study. When those stations are properly excluded, CCR-Sierra's proposal creates a large "gray area" (*i.e.*, an area that receives only one aural service). This gray area detracts from the public interest benefits of CCR-Sierra's proposal.

3. Finally, CCR-Sierra's proposal is defective because it fails to provide a *Tuck* showing to demonstrate the independence of Tanque Verde from Tucson. Such a showing is required because Tanque Verde is partially located in the Tucson Urbanized Area.⁶ *See Malvern and Bryant, Arkansas*, 14 FCC Rcd 3576 (1999). The Joint Parties have provided the necessary *Tuck* showing herein. While the Commission may permit CCR-Sierra to rely on the *Tuck* showing submitted herein rather than require CCR-Sierra to submit its own showing, it should not evaluate the CCR-Sierra proposal without holding it to the same *Tuck* standards in view of the fact that most of Tanque Verde is indeed located within the Tucson Urbanized Area.

⁶ The Commission, in the *NPRM*, mistakenly stated that Tanque Verde is not located in the Tucson Urbanized Area. However, as shown in the Engineering Statement, a substantial portion of Tanque Verde is actually located in the Tucson Urbanized Area.

II. PUBLIC INTEREST BENEFITS

4. The Joint Parties' public interest benefits are as follows: (i) the provision of a first aural service to a "white area" consisting of 237 persons and 4,385 sq. km; (ii) the provision of a second aural service to a "gray area" consisting of 517 persons and 1,545 sq. km; and (iii) the provision of first local services at Tanque Verde, Arizona (2000 U.S. Census population 16,195), Animas, New Mexico (population 200),⁷ and Virden, New Mexico (2000 U.S. Census population 143).

5. For the reasons discussed above, CCR-Sierra's proposal is defective because no suitable transmitter site is available. Therefore, there is no need to compare the public interest benefits of the two proposals. Nevertheless, the Joint Parties' proposal would be favored over that of CCR-Sierra in such a comparison. First, the Joint Parties' proposal advances Priority (1) because it provides service to a "white area" of 4,385 sq. km. containing 237 people. *See Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982) ("*FM Assignment Policies*"). Second, even though both proposals would further Priority (3) (provision of a first local service), the Joint Parties' proposal better serves the public interest in that regard because it will provide first local service to three communities and a larger population. Specifically, the Joint Parties' proposal provides a first local service to 16,538 people and a second aural service to 517 people, for a net gain in population of 17,055 under co-equal priorities (2) and (3). CCR-Sierra's proposal provides a first local service to 16,195 but removes the second aural service from 7,485, for a net gain in population of only 8,710 under co-equal priorities (2) and (3).⁸

⁷ Rand McNally Large Scale Road Atlas (2005).

⁸ Because priorities (2) and (3) are co-equal, a net loss in priority (2) population counts against a priority (3) gain. *See Meeker and Craig, Colorado*, 15 FCC Rcd 23858 (2000); *Littlefield, Wolfforth, and Tahoka, Texas*, 12 FCC Rcd 3215 (1997).

III. STATION KKYZ(FM), CORONA DE TUCSON TO TANQUE VERDE, ARIZONA.

(a) Technical Analysis

6. As demonstrated in the Engineering Statement, Channel 267C3 can be allotted to Tanque Verde at the coordinates of 32-8-45 North Latitude, 110-46-56 West Longitude consistent with Section 73.207 the Commission's Rules with respect to all existing and proposed domestic allotments and facilities, except for the proposal in the *NPRM* to allot Channel 265A to Tanque Verde. A 70 dBu signal can be provided to Tanque Verde from the proposed reference coordinates. The relocation of KKYZ(FM) from Corona de Tucson to Tanque Verde will result in a predicted net gain in population of 307,293 persons within the proposed KKYZ(FM) 60 dBu contour. The loss area will continue to receive at least 5 other aural services and will thus remain well served. *See Engineering Exhibit.*

(b) Change in Community of License

7. Cochise desires to change the community of license of KKYZ(FM) from Corona de Tucson to Tanque Verde under the guidelines set forth in *Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recons. granted in part*, 5 FCC Rcd 7094 (1990) ("*Community of License*"). There, the Commission stated that a station may change its community of license without subjecting the license to other expressions of interest if (1) the proposed allotment is mutually exclusive with the current allotment; (2) the current community of license will not be deprived of its only local service; and (3) the proposed arrangement of allotments is preferred under the Commission's allotment priorities. These criteria are met here. First, the proposed use of Channel 267C3 at Tanque Verde is mutually exclusive with the current use of Channel 267C3 at Corona de Tucson. Second, Corona de Tucson will not be deprived of its only local service

because Station KKYZ(FM) has not been constructed yet.⁹ In addition, as discussed below, Station KRDX(FM) is proposing to change its community of license from Vail to Corona de Tucson. Third, the proposal will result in a preferential arrangement of allotments. In this regard, the proper comparison is the provision of a first local service to Tanque Verde, Arizona (2000 U.S. Census population 16,195) under Priority 3 over the retention of a second local service at Lordsburg, New Mexico (2000 U.S. Census population 3,379) under Priority 4.¹⁰ See *FM Assignment Policies, supra*.

8. Tanque Verde is partially located in the Tucson Urbanized Area and the station's proposed 70 dBu contour will cover approximately 63% of the Urbanized Area.¹¹ Therefore, this relocation implicates the Commission's policy regarding the migration of stations into urban areas. See *Headland, Alabama and Chattahoochee, Florida*, 10 FCC Rcd 10352 (1995) ("*Headland*"); *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988) ("*Tuck*"). Under *Tuck*, in making the determination whether to award a community a first local service preference, the Commission will consider (1) the extent to which the station will provide service to the entire Urbanized Area, (2) the relative populations and proximity of the suburban and central city, and, most importantly, (3) the independence of the suburban community. *Tuck*, 3 FCC Rcd at 5377-78. In this case, from the proposed transmitter site, Channel 267C3 would place a 70 dBu contour 63% of the Tucson Urbanized Area. The population of Tanque Verde (2000 U.S. Census population 16,195) is 3.3% of that of Tucson (2000 U.S. Census population 486,699) and

⁹ See *Chatom and Grove Hill, Alabama*, 12 FCC Rcd 7664 (1997).

¹⁰ As discussed below, Station KRDX is relocating from Vail to Corona de Tucson, and a new station at Lordsburg is relocating to Vail. Therefore, Lordsburg is the community ultimately losing service, and Lordsburg retains service from Station KPSA-FM. See *Dinosaur, Colorado, et al.*, 19 FCC Rcd 10327 (2004) (comparison between first local service at Coalville, Utah and second service at Preston, Idaho).

¹¹ As discussed above, the *NPRM's* statement to the contrary is erroneous.

Tanque Verde is located 18 kilometers from Tucson.¹² These figures are similar to those of other suburban communities granted a first local preference. *See, e.g., Park City, Montana*, 19 FCC Rcd 2092, 2094 (2004) (Park City's population is less than 1% of that of Billings, and Park City is located 21 miles from Billings); *Ada, Newcastle and Watonga, Oklahoma*, 11 FCC Rcd 16896, 16899 (1996) (Newcastle's population is less than 1% of that of Oklahoma City, and Newcastle is located 15 miles from Oklahoma City). Nevertheless, the Commission has repeatedly stated that these factors are less important than evidence of independence. *See Headland*, 10 FCC Rcd at 10355.

9. Tanque Verde is a CDP located to the east of Tucson. Tanque Verde is located in Pima County and is listed in the 2000 U.S. Census with a population of 16,195 persons. The boundaries of Tanque Verde are defined by the Tanque Verde Unified School District, which is the independent organization that administers the schools in Tanque Verde.¹³ As the attached maps show, Tanque Verde is not located within the Tucson city limits.¹⁴ These maps, and the following analysis of the *Tuck* factors, demonstrate that Tanque Verde is independent of Tucson. While not all of the *Tuck* factors are present, a majority is sufficient to establish independence. *See, e.g., Pleasanton, Bandera, Hondo, and Schertz, Texas*, 15 FCC Rcd 3068 (2000).

(1) ***Extent to which the residents of Tanque Verde work in Tanque Verde.***

According to 2000 Census figures, 980 of the 8,101 employed individuals in Tanque Verde, or 12%, work in Tanque Verde. This percentage compares favorably with other

¹² The reference coordinates for Tanque Verde are 32-15-06, 110-44-12; for Tucson 32-13-13, 110-55-33.

¹³ *See* Map 1. The boundaries of the Tanque Verde Unified School District are designated by the red border. A copy of this map is available at <http://www.tanq.org/>.

¹⁴ *See* Maps 2, 3, & 4. Maps 2 & 3 show the Tucson city limits, which is designated in blue. Map 4 shows the boundaries of the Tucson School District (in dark green) and the Tanque Verde Unified School District (in light green). These maps were obtained from Pima County (where Tucson and Tanque Verde are located). The website is <http://www.dot.co.pima.az.us/>.

independent communities. *See, e.g., Albemarle and Indian Trail, North Carolina*, 16 FCC Rcd 13876 (2001) (11.3% of working-age residents worked in community); *Coolidge and Gilbert, Arizona*, 11 FCC Rcd 3610 (1996) (13% of Gilbert's working population actually worked in Gilbert). Further, as shown below, there are many employers in Tanque Verde who provide ample opportunities for Tanque Verde residents to be employed in Tanque Verde and not in Tucson. This alleviates any concerns that Tanque Verde is dependent on Tucson for the employment of its residents. *See Lebanon and Speedway, Indiana*, 17 FCC Rcd 25064, 25065 (2002). *See Exhibit 2.*

(2) ***Newspapers and other media that cover Tanque Verde's local needs and interests.*** The residents of Tanque Verde get information on Tanque Verde from two newsletters. The Tanque Unified School District publishes its own monthly newsletter, "News and Views," that contains information on the District and other news in Tanque Verde. The Tanque Verde Soccer Club also publishes its own newsletter. *See Exhibit 2.*

(3) ***Community leaders and residents perceive Tanque Verde as being separate from Tucson.*** Tanque Verde was first organized in 1886. The name "Tanque Verde" means "green tank" in Spanish and is probably a reference to an algae filled stock watering tank in the area. Even with the development and expansion of Tucson, the area has remained independent of Tucson. This is demonstrated by the fact that the Tanque Verde School Unified School District has elected to remain an independent district and by the fact that Tanque Verde is still located outside the Tucson city limits. Also, as detailed below, a number of businesses identify with the community by using "Tanque Verde" in their names. *See Exhibit 2.*

(4) *Tanque Verde has its own independent government entities.* As discussed above, the boundaries of Tanque Verde are defined by the Tanque Verde Unified School District, which is the independent organization that administers the schools in Tanque Verde. Today, there are over 1,600 students enrolled and the District has a budget of approximately \$8.2 million. The District is administered by a Board of Governors. The Board is composed of five district residents each elected to four year terms. The Board is responsible for educational policies and financial plans for the district. The management of the school district is carried out through the Superintendent and her management team. The Superintendent reports to the Governing Board. See Exhibit 2.

Tanque Verde police and fire protection are provided independently of Tucson. The Tucson Police Department has no jurisdiction outside the Tucson city limits, and police protection is provided to Tanque Verde by the Pima County Sheriff's Department. Similarly, fire protection is provided to Tanque Verde by Rural/Metro Corporation, the nation's leading private sector fire protection and emergency ambulance transportation provider.

(5) *Zip code, post office, and phone directory.* Tanque Verde does not have its own ZIP code. Businesses and residents in Tanque Verde use a Tucson ZIP code, and therefore have Tucson addresses.

(6) *Tanque Verde has its own commercial establishments, community organizations and health care providers.* There are numerous business in the area that identify with the community by using "Tanque Verde" in their name.¹⁵ They include,

¹⁵ Because Tanque Verde does not have its own zip code, these business have a Tucson zip code. However, the majority of these business are located in Tanque Verde (and thus, outside of the Tucson city limits).

Tanque Verde Landscape Design, Tanque Verde Apartments, Tanque Verde Cleaners, Tanque Verde Electric, Tanque Verde Enterprises, Tanque Verde Exxon, Tanque Verde Hay Feed & Supply, Tanque Verde Motors, Tanque Verde Real Estate, and Tanque Verde Travel. The community is also served by a number of community organizations including Tanque Verde Lutheran Church, Tanque Verde Baptist Church, and Tanque Verde Soccer Club. There are also a number of doctors who practice in Tanque Verde. The Tanque Verde Ranch, which provides horseback riding vacations, is located in Tanque Verde. *See Exhibit 2.*

(7) ***Advertising market.*** No advertising outlet currently enables Tanque Verde businesses to reach Tanque Verde residents independently of Tucson.

(8) ***Tanque Verde has its own schools and libraries.*** As discussed above, Tanque Verde has its own school district, the Tanque Verde Unified School District. The District administers four schools in Tanque Verde: Tanque Verde Elementary School, Agua Caliente Elementary School, Emily Gray Junior High, and Tanque Verde High School. All of these schools have their own libraries. In addition, the Kirk-Bear Canyon Branch Library located in Tanque Verde provides Tanque Verde residents access to books and other library materials. *See Exhibit 2.* The library has meeting rooms, computers, and programs for adults and children.

10. Cochise states that as the licensee of KKYZ(FM), it will apply for Channel 267C3 to serve Tanque Verde and construct the facility if a permit is granted.

IV. STATION KRDX(FM), VAIL TO CORONA DE TUCSON, ARIZONA.

(a) Technical Analysis

11. In order to ensure that Corona de Tucson retains local service, Desert West proposes to delete Channel 253A at Vail, Arizona and allot Channel 253A to Corona de Tucson,

Arizona. As demonstrated in the Engineering Exhibit, Channel 253A can be allotted to Corona de Tucson at the station's current site consistent with Section 73.207 the Commission's Rules with respect to all existing and proposed domestic allotments and facilities. A 70 dBu signal can be provided to Corona de Tucson from the current reference coordinates. The relocation of KRDX(FM) from Vail to Corona de Tucson will not result in a gain or loss in population. *See* Engineering Exhibit.

(b) Change in Community of License

12. The relocation of KRDX(FM) from Vail to Corona de Tucson complies with the Commission's policy in *Community of License, supra*. First, the proposed use of Channel 253A at Corona de Tucson is mutually exclusive with the current use of Channel 253A at Vail. Second, Vail will not be deprived of its only local service because Station KRDX has not yet been constructed.¹⁶ In addition, as discussed below, Cochise is proposing to change the community of license of its new station from Lordsburg, New Mexico to Vail, Arizona. Third, as discussed above, the provision of a first local service to Tanque Verde, Arizona under Priority 3 will result in a preferential arrangement of allotments over the retention of a second local service at Lordsburg, New Mexico under Priority 4.

13. The Commission has already determined that Corona de Tucson is a community for allotment purposes pursuant to the *Report and Order* in MB Docket No. 03-141.¹⁷ Desert West states that as the licensee of KRDX(FM), it will apply for Channel 253A to serve Corona de Tucson and construct the facility if a permit is granted.

V. NEW STATION, LORDSBURG, NEW MEXICO TO VAIL, ARIZONA.

(a) Technical Analysis

¹⁶ *See Chatom and Grove Hill, Alabama*, 12 FCC Rcd 7664 (1997).

¹⁷ 19 FCC Rcd 10997 (2004).

14. In order to ensure that Vail retains local service, Cochise proposes to delete Channel 279C1 at Lordsburg, New Mexico and allot Channel 279A to Vail, Arizona. As demonstrated in the Technical Exhibit, Channel 279A can be allotted to Vail at the coordinates of 31-58-16 North Latitude, 110-35-59 West Longitude consistent with Section 73.207 the Commission's Rules with respect to all existing and proposed domestic allotments and facilities. A 70 dBu signal can be provided to Vail from the proposed reference coordinates. The relocation of this channel from Lordsburg to Vail will result in a predicted net gain in population of 2,205 persons within the proposed 60 dBu contour.

15. The relocation of the Lordsburg channel would create unserved areas but for the proposed new allotments at Animas and Virden, New Mexico. These new allotments are discussed below. When the Lordsburg loss area is considered excluding the area served by the Animas and Virden allotments, the entire loss area is well-served with more than five reception services. *See Engineering Exhibit.* The Joint Parties recognize that under Commission precedent, the loss of reception service cannot be cured through the provision of vacant allotments. *See Sells, Arizona*, 19 FCC Rcd 22459 (2004), *pet. for recon. pending*. However, there is no loss of *actual* reception service here, because the Lordsburg station has not been constructed and has never been on the air. This distinction is important, because the *Sells* policy is concerned with the loss of existing service. Just as the Commission is less concerned with the loss of a vacant allotment that represents a community's only local service, *see Chatom and Grove Hill, Alabama, supra*, the concern with respect to the loss of a *potential* reception service should be attenuated. Therefore, the Joint Parties urge the Commission to accept the provision of two new vacant allotments to replace the loss of potential service at Lordsburg.

(b) Change in Community of License

16. The relocation of this station from Lordsburg to Vail complies with the Commission's policy in *Community of License, supra*. First, the proposed use of Channel 279A at Vail is mutually exclusive with the current use of Channel 279C1 at Lordsburg. Second, Lordsburg will not be deprived of its only local service because, Station KPSA-FM is currently licensed to Lordsburg. Third, as discussed above, the provision of a first local service to Tanque Verde, Arizona under Priority 3 will result in a preferential arrangement of allotments over the retention of a second local service at Lordsburg, New Mexico under Priority 4.

17. The Commission has already determined that Vail is a community for allotment purposes pursuant to the *Report and Order* in MM Docket No. 00-31.¹⁸ Also, Cochise states that as the permittee of the new station, it will apply for Channel 279A to serve Vail and construct the facility if a permit is granted.

VI. CHANNEL 279C1, ANIMAS, NEW MEXICO.

18. The Joint Parties propose the allotment of Channel 279C1 at Animas, New Mexico as that community's first local service. As demonstrated in the Technical Exhibit, Channel 279C1 can be allotted to Animas at the coordinates of 31-56-50 North Latitude, 108-28-45 West Longitude consistent with Section 73.207 the Commission's Rules with respect to all existing and proposed domestic allotments and facilities. A 70 dBu signal can be provided to Animas from the proposed reference coordinates. *See* Engineering Exhibit.

19. Animas is a community for allotment purposes. Animas is located in Hidalgo County, New Mexico, and, according to the Rand McNally Road Atlas (Large Scale ed. 2005), it has a population of 200 persons. Animas has a ZIP code (88020), several businesses, a fire

¹⁸ 16 FCC Rcd 20515 (2001).

department, several churches and various other community indicia. The United States Postal Service operates a post office in Animas. The Animas Independent School District #6 is headquartered in Animas operating the Animas Elementary School and Animas High School. The Animas Volunteer Fire and Rescue is a combination paid/volunteer department providing firefighting, hazard material response, EMS, extrication and search and rescue services. A number of local businesses are located in Animas including Animas Valley Clinic, Panthers Track Café, Cotton City Grocers, and Linda's Grocery and Bar. *See Exhibit 3.*

20. The Joint Parties reiterate that, if Channel 279C1 is allotted to Animas, they will file the necessary applications and construct the facilities as authorized.

VII. CHANNEL 228C1, VIRDEN, NEW MEXICO.

21. The Joint Parties propose the allotment of Channel 228C1 at Virden, New Mexico as that community's first local service. As demonstrated in the Technical Exhibit, Channel 228C1 can be allotted to Virden at the coordinates of 32-24-12 North Latitude, 108-53-59 West Longitude consistent with Section 73.207 the Commission's Rules with respect to all existing and proposed domestic allotments and facilities. A 70 dBu signal can be provided to Virden from the proposed reference coordinates. *See Engineering Exhibit.*

22. Virden, located in Hidalgo County, is a community for allotment purposes. Virden is an incorporated village listed in the 2000 U.S. Census with a population of 143 persons. *See Exhibit 4.* Therefore, Virden is presumed to have the status of a community for allotment purposes. *See Arnold and Columbia, California, 7 FCC Rcd 6302, ¶ 12 (1992).* According to Nelda Potter of the Village of Virden government, Virden has several businesses, a volunteer fire department, a public library and various other community indicia. According to Ms. Potter, Virden was incorporated in 1932. The village government is composed an elected mayor and four village council members who serve four-year terms. In addition, Virden has a

village treasurer and clerk. The village government provides water service and operates the local public library. The Duncan School District provides public school education to the children of the village. The Joint Parties reiterate that, if Channel 228C1 is allotted to Virden, they will file the necessary applications and construct the facilities as authorized.

VIII. CONCLUSION.

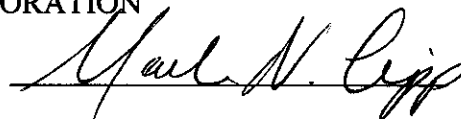
23. This proposal is in the public interest and would be favored over CCR-Sierra's proposal to allot Channel 265A to Tanque Verde, Arizona even if CCR-Sierra's proposal were not defective. Specifically, the Joint Parties' proposal will result in: (i) the provision of a first aural service to a "white area" consisting of 237 persons and 4,385 sq. km; (ii) the provision of a second aural service to a "gray area" consisting of 517 persons and 1,545 sq. km; and (iii) the provision of first local services at Tanque Verde, Arizona (2000 U.S. Census population 16,195), Animas, New Mexico (population 200), and Virden, New Mexico (2000 U.S. Census population 143). Thus, the Joint Parties respectfully request that the Commission grant their proposal.

Respectfully submitted,

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**Engineering Statement
Comments and Counterproposal in MB Docket No. 05-245
Sierra Vista and Tanque Verde, Arizona
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This Engineering Statement has been prepared on behalf of Cochise Broadcasting, LLC ("Cochise"), and Desert West Air Ranchers Corporation ("DWAR") in support of Comments and a Counterproposal filed in MB Docket No. 05-245.

The Notice of Proposed Rulemaking in MB Docket No. 05-245 was issued at the request of CCR-Sierra Vista IV, LLC ("Petitioner"), and proposes the reallocation of Channel 265A from Sierra Vista to Tanque Verde, Arizona, for use by its station KZMK. As will be demonstrated below:

- 1) Petitioner has proposed a non-viable allotment site, one which is unsuitable for tower construction;
- 2) Petitioner has inappropriately included several Mexican facilities in its loss area study, as well as a station which has been reallocated out of the area in a previous (and final) rulemaking proceeding. A correct analysis of the loss area reveals that the removal of Channel 265A from Sierra Vista would deprive 7,485 persons in an 891 square kilometer area of their second aural service, and;
- 3) Petitioner has omitted the required "Tuck" analysis, based on an incorrect conclusion that Tanque Verde is not located within the Tucson Urbanized Area.

Cochise and DWAR proffer a counterproposal which is to be preferred over the Petitioner's defective proposal.

SECTION I - Review of Petitioner's Proposal**Petitioner's Allotment Reference Site is Unsuitable for Tower Construction**

Petitioner has proposed that Channel 265A be allotted for use at Tanque Verde at reference coordinates N32-19-59 x W110-45-19. What Petitioner has failed to recognize is that this site (on the southwest slope of Gibbon Mountain) is located within the boundary of the Pusch Ridge Wilderness Area of the Coronado National Forest and administered by the USDA Forest Service. As such it is extremely unlikely, if not outright impossible, that Petitioner could receive permission to construct a tower at this location, or at any other location within the wilderness area.

The "Wilderness Area" designation carries with it a prohibition against development or construction. Indeed, Section 4(c) of The Wilderness Act of 1964 (Public Law 88-577), by act of Congress, expressly states:

4(c) Except as specifically provided for in this Act, and subject to existing private rights, there shall be no commercial enterprise and no permanent road within any wilderness area designated by this Act and, except as necessary to meet minimum requirements for the administration of the area for the purpose of this Act (including measures required in emergencies involving the health and safety of persons within the area), there shall be no temporary road, no use of motor vehicles, motorized equipment or motorboats, no landing of aircraft, no other form of mechanical transport, and no structure or installation within any such area.

A search of the FCC databases does not indicate the presence of any existing tower or transmission facility at the reference coordinates which might be considered a grandfathered pre-existing use. This is hardly surprising, given that those coordinates are located along a steep hillside without any apparent access road.

The attached map exhibit (including sections of the "Sabino Canyon, AZ" and "Agua Caliente Hill, AZ" 7.5 minute topographic maps) depicts the location of the Tanque Verde 265A allotment site

within the Pusch Ridge Wilderness Area. Also attached is a map of the extent of the Pusch Ridge Wilderness Area downloaded from the Pusch Ridge Wilderness Area web site.¹

It should be noted that the community of Tanque Verde is extensive in area, comprising 85 square kilometers. There is no fully-spaced location for the use of Channel 265A at Tanque Verde which will encompass 100% of the community within a 16.2 kilometer arc (i.e. the standard 70 dBu contour distance for a Class A facility) and which is outside both the Pusch Ridge Wilderness Area and the Coronado National Forest.

The unsuitability of any location within the Pusch Ridge Wilderness Area has been amply demonstrated, given the clear language of The Wilderness Act of 1964. In addition, there is not believed to be any suitable location for the Tanque Verde 265A allotment site within the relevant portion of the Coronado National Forest. Only 16 square kilometers of the Coronado National Forest are fully-spaced for use of Channel 265A and within 16.2 kilometers of 100% of Tanque Verde. All of that area is adjacent to the General Hitchcock Highway (commonly referred to as the Mount Lemmon Highway or sometimes as the Catalina Highway), a designated Scenic Byway considered to be one of the most scenic roads in southeast Arizona.

A review of the USGS topographic maps of this portion of the Coronado National Forest, as well as recent aerial photography, indicates that the only existing roads through this area are the General Hitchcock Highway and a few short access roads in low-lying areas, generally for trailhead or campground access. These low-lying areas are unsuitable for tower construction given their impact on the Scenic Byway, trails, and campgrounds, and would be terrain-shadowed into Tanque Verde in any case. Furthermore, the inability to reach any of the peaks in the area due to the lack of access roads renders it highly unlikely that Petitioner would ever be able to construct a transmitter site in this portion of the Coronado National Forest.

¹ See <http://www.fs.fed.us/r3/coronado/forest/recreation/wilderness/pusch.shtml>

Petitioner's Sierra Vista Loss Area Study is Incorrect

Petitioner has submitted that the entire loss area at Sierra Vista will retain at least four aural services. This analysis, however, improperly considers FM station KKYZ as providing service to the Sierra Vista area. KKYZ was reallocated from Sierra Vista to Corona de Tucson by the Report and Order in MB Docket No. 03-141, released on June 25, 2004, which action is now final. The new KKYZ allotment on Channel 267C3 at Corona de Tucson provides service to only a small portion of the Petitioner's Sierra Vista loss area, not the 100% service indicated by the Petitioner's filing.

Furthermore, the Petitioner claims numerous Mexican stations as providing service to the loss area, despite the fact that the Commission has previously stated that Mexican stations cannot be counted as providing aural service in a domestic FM rulemaking context.²

A correct analysis has been made of the services remaining in the Petitioner's Sierra Vista loss area. This analysis excludes the KKYZ Sierra Vista service area (since that station has been reallocated to Corona de Tucson), as well as the Mexican stations included by the Petitioner. Each of the following stations has been found to provide service to some portion of the loss area³:

KTAN(AM)	1420 kHz	Sierra Vista	(NIF = 7.2 mV/m)
KNXN(AM)	1470 kHz	Sierra Vista	(NIF = 14.4 mV/m)
KRMB(FM)	211A	Bisbee	

² "The Notice also discounted service received in the loss area at Nogales, Arizona, from broadcast stations located in Nogales, Sonora, Mexico, since the Commission does not consider foreign stations when determining reception service in allotment proceedings." See Report & Order in MM Docket No. 00-31, *Nogales, Vail and Patagonia, Arizona* (16 FCC Rcd 20515) released November 23, 2001, at paragraph 2.

³ In determining reception service provided by FM stations, the area of service circumscribed by the station's 1.0 mV/m signal contour was considered, assuming 1) actual facilities for non-commercial stations operating on reserved channels, 2) maximum facilities for the class of station for stations (other than Class C stations) operating on non-reserved channels, and 3) minimum or existing Class C facilities, whichever is greater, for Class C stations. For clear channel Class A AM stations, the service area was defined by the station's 0.5 mV/m groundwave contour, based on its licensed facilities. For all other classes of full-time AM stations, reception service was defined as that service received within a station's nighttime interference-free contour. See Meeker and Craig, Colorado, 15 FCC Rcd 23858 (2000), Stamps and Fouke, Arkansas, 14 FCC Rcd 10533 (1999), Silverton and Bayfield, Colorado, 14 FCC Rcd 4071 (1999), Malvern and Bryant, Arkansas, 13 FCC Rcd 8426 (1998), and others.

KUAT-FM	213C	Tucson
KWRB(FM)	215A	Bisbee ⁴
KFMA(FM)	221C2	Green Valley
KWCD(FM)	222A	Bisbee
KWMT-FM	225C	Tucson
KRQQ(FM)	229C	Tucson
KMXZ-FM	235C	Tucson
KCDQ(FM)	237C0	Tombstone
KLPX(FM)	241C	Tucson
KAVV(FM)	249A	Benson
KRDX(FM)	253A	Vail
KIIM-FM	258C	Tucson
KKYZ(FM)	267C3	Corona de Tucson ⁵
KHYT(FM)	298C	Tucson

The results of this analysis indicate that the reallocation of Channel 265A from Sierra Vista to Tanque Verde will remove the second aural service from 7,485 persons in an 891 square kilometer area.

Petitioner Should Have Provided a “Tuck” Analysis

Petitioner is incorrect in its statement on page 3 of its Petition for Rulemaking that “Tanque Verde is not part of an urbanized area.” The attached map exhibit demonstrates that 50% of the 85.2 km² area of Tanque Verde is included within the Tucson Urbanized Area. Furthermore, this area includes 13,306 of the 16,195 persons residing in Tanque Verde, or 82% of the population.

A “Tuck” analysis is triggered when the proposed new community of license is located within an urbanized area. Consequently, Petitioner should have included a “Tuck” analysis as a part of its Petition for Rulemaking.

⁴ While non-commercial station KWRB does hold a construction permit for reserved Channel 215C2 at Bisbee (FCC File No. BPED-20020515ABA), that permit was issued only recently, on 4/20/2005. No license application is currently pending for the KWRB Class C2 facility, and it is conceivable that the KWRB upgrade will never be constructed. Therefore it is believed that Petitioner cannot count on the licensing of the KWRB Class C2 facility to provide additional service to the Sierra Vista loss area.

⁵ The coordinates of the Corona de Tucson Channel 267C3 allotment site have been used (N31-57-24 x W110-41-38).

SECTION II - Cochise/DWAR Counterproposal

In lieu of the technically deficient allotment changes proposed by Petitioner, Cochise (licensee of station KKYZ Channel 267C3 Corona de Tucson [Facility ID #2185], and permittee of a new FM on Channel 279C1 at Lordsburg [Facility ID #164116]) and DWAR (licensee of station KRDX Channel 253A Vail [Facility ID #36023]) propose that the Commission amend §73.202 of the Commission's Rules to:

- 1) Reallot Channel 267C3 from Corona de Tucson, Arizona to Tanque Verde, Arizona as the first local service at that community, and modify the license of station KKYZ to specify operation on Channel 267C3 at Tanque Verde;
- 2) Reallot Channel 253A from Vail, Arizona to Corona de Tucson, Arizona, and modify the license of station KRDX to specify operation on Channel 253A at Corona de Tucson;
- 3) Substitute Channel 279A for Channel 279C1 at Lordsburg, New Mexico, and reallot Channel 279A to Vail, Arizona;
- 4) Allot Channel 279C1 at Animas, New Mexico, as the first local service at that community, and;
- 5) Allot Channel 228C1 at Virden, New Mexico, as the first local service at that community.

Schematically, the proposal is as follows:

Community	Present	Proposed
Corona de Tucson, AZ	267C3	253A
Tanque Verde, AZ	- - -	267C3
Vail, AZ	253A	279A
Animas, NM	- - -	279C1
Lordsburg, NM	250C, 279C3 ⁶	250C
Virden, NM	- - -	228C1

⁶ The table has been amended to 279C1 based on the grant of BNPB-20050609ABD, but that action is not final until the Federal Register has published the Order.

The proposed reallocation plan is in the public interest, as it will provide several benefits:

- 1) Tanque Verde, Arizona, a Census Designated Place with a 2000 Census population of 16,195 persons, will receive its first local service.
- 2) Animas, New Mexico, a town with a population of 200 persons, will receive its first local service.
- 3) Virden, New Mexico, an incorporated city with a 2000 Census population of 143 persons, will receive its first local service.
- 4) A total of 364,186 persons in a 20,734 km² area will receive an additional aural service.
- 5) A total of 237 persons in a 4,385 km² area will receive their first aural service.
- 6) A total of 517 persons in a 1,545 km² area will receive their second aural service.
- 7) In accommodating the benefits listed above, no areas will lose their first or second aural service.

Channel 267C3 at Tanque Verde, Arizona

As outlined in the attached channel study, Channel 267C3 can be assigned for use at Tanque Verde in compliance with the Commission's applicable Rules and Regulations regarding the separation among FM allotments, assuming that Petitioner's technically deficient proposal to allot Channel 265A at Tanque Verde is denied. For this study preferred site coordinates at N32-08-45 x W110-46-56 have been used. This site is 19.4 kilometers from the far side of Tanque Verde. The nominal distance to the 70 dBu F(50,50) contour for a Class C3 station is 23.2 kilometers. Therefore, and as depicted on the attached map exhibit, this site will provide greater than 70 dBu coverage for all of Tanque Verde.

The proposed allotment at Tanque Verde is short-spaced to two Mexican allotments. Specifically, this proposal is short-spaced by 40 km to vacant Channel 266B at Sasabe, and by 62 km to vacant Channel 267B at Agua Prieta. Attached are engineering studies, conducted pursuant to the procedures in the US-Mexico FM Agreement, which demonstrate that equivalent protection can be provided to the Mexican allotments by the limitation of the proposed facilities of Channel